UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1058
15 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1058th MEETING

Held at Headquarters, New York,
on Tuesday, 9 April 1991, at 3 p.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR
(Vice-Chairman)

later: Mr. POCAR

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva and Mr. Kalpage (Sri Lanka) took places at the Committee table.

2. The CHAIRMAN said that the Sri Lankan delegation would proceed to answer questions held over from section I of the list of issues.

3. Mr. de SILVA (Sri Lanka) requested that the extensive written replies it had provided in answer to the questions submitted in advance be considered as a supplement to Sri Lanka's second periodic report.

4. Concerning derogations from rights affirmed in the Covenant, he said that his delegation had been asked to set out the parameters of such derogations. If a list of all the laws which constituted derogations were required, it could be furnished in due course.

5. Article 15 of the Constitution of Sri Lanka divided the various restrictions on the exercise of fundamental rights into categories. The first category related to special rules and regulations under the Public Security Ordinance which were of an essentially temporary nature, although some had been in force for a matter of months or even years due to the continuing threat to public order and security. The second category consisted of laws permanently on the statute book which concerned restrictions prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. Such statutes were aimed, for example, at the protection of women and children or at preventing the circulation of publications which might offend religious sensitivities. Similarly, the right to information was restricted by the requirements of privacy, State privilege or official secrecy.

6. Article 15 also made provision for restrictions on business activity which might be injurious to the national economy, for example in situations where it might be necessary to break up a monopoly or to restrict the import of certain goods.

7. Derogations were permitted under the emergency regulations, but the courts had the capacity to declare them unconstitutional. By way of illustration he mentioned the case in which the courts had overturned a government order (under the emergency legislation) banning posters in which the insurgents called for a curfew on business hours which, they hoped, would bring the economy to a standstill. In all cases the criterion for the acceptability of a derogation was that of reasonableness.

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8. Reasonableness was also the criterion applied in article 15 (8) of the Constitution, which limited the rights of a member of the Armed Forces to challenge an order. If the order was unfair, it could be challenged by a court, but not by the serviceman himself. Such a regulation simply reflected the exigencies of service discipline.

9. A question had been asked regarding article 16 of the Constitution, which provided that existing written and unwritten law should continue in force. In that connection, he said that it was acknowledged that, while a large number of customary laws, for example the Islamic laws restricting a married woman's right to dispose of property, might be regarded by the Committee as obsolete and discriminatory, their repeal could give rise to problems because of popular resistance to change.

10. With regard to the functions of the Ombudsman, he said that the reason why recourse to the Ombudsman was solely through a Member of Parliament was that alternative remedies were available. Persons with complaints relating to unfair treatment or discrimination had recourse either directly to a court of law, to the Commission for the Elimination of Discrimination, or, through a Member of Parliament, to the Ombudsman. No information was immediately available to him on the number of cases handled by the Ombudsman, but statistics could be supplied later.

11. Referring to standards of reasonableness as they applied to the emergency regulations, he said that the criteria followed were based on judicial precedent in administrative law in both Sri Lanka and the United Kingdom. He was unable, however, to find any statement of the international standard of reasonableness, and would be grateful if any member of the Committee could refer him to a document in which it was set out.

12. On the question of the period of operation of the Prevention of Terrorism Act, he said that, although the Act had originally been passed in 1979 for a period of three years, the continuing civil unrest had made it necessary to annul the limiting provision contained in section 29 of that Act. The Act itself remained in force.

13. The provision in the Act concerning robbery with violence of government property, and of banks and cooperatives engaged in public business, in addition to related offences involving murder, violence, coercion and intimidation, had been adopted in response to the objectives of the insurgents, who were endeavouring to prevent the Government and other public institutions from engaging in any activity in the areas that terrorists sought to control. The penalties provided in the Act did not apply with equal rigour to all offences, and the provisions prohibiting inflammatory utterances and graffiti were paralleled in the legislation of many other countries.

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14. Concerning the compatibility of the Seventeenth Amendment to the Constitution with the provisions of the Covenant, he said that the intention behind the Amendment was to bring the Constitution more closely into line with that instrument, and that he would communicate the Committee's views regarding the compatibility of any specific provision in the Amendment to his Government.

15. In connection with the question of habeas corpus, he said that petitions for habeas corpus were only unsuccessful in cases where an allegation had been made of unalwful detention and the authorities were able to satisfy the court that the persons concerned were either guilty of offences or of such conduct as justified their detention. It should also be pointed out that cases involving detention were processed in chronological order, and that some petitioners had tried to "jump the queue" by filing applications for habeas corpus. It was known that international non-governmental organizations had made financial assistance available to petitioners in order to enable them to file their applications, thus increasing the number of such actions and adding to the delays in processing them. In no case, however, did an application take two years to process, as had been alleged. Normally the period was one week, but in cases in which the authorities alleged that the person concerned was not in fact in their custody, the necessary investigations could of course be lengthy.

16. Article 126 of the Constitution established that applications to the Supreme Court regarding allegations of infringements of fundamental rights should be made within one month, a period which was clearly inadequate and which the Seventeenth Amendment sought to extend to four months. In any case, the one-month limitation was not treated as mandatory, and was invoked only in cases where there had been an unnecessary delay in the application.

17. He would prefer not to answer the question about the Indian peace-keeping force, since the force had been withdrawn more than a year previously, but would do so if pressed.

18. In conclusion, he said that he could not agree with the general proposition that international law required that the Covenant be directly enforceable in domestic law.

19. Mr. PRADO VALLEJO thanked the representative of Sri Lanka for his reply in connection with habeas corpus, but said that it had been his impression that some such cases had indeed dragged out for two years or more. He had information indicating that the Minister of State for Justice, addressing Parliament in March 1990, had stated that there had been 720 applications for habeas corpus between July 1987 and March 1989, and that some of them had taken more than two years to process, the minimum period being eight days.

20. He welcomed the proposed extension of the period within which applications concerning infringements of fundamental rights could be made to the Supreme Court, but felt that, in principle, there should be no limitation in such cases.

(Mr. Prado Vallejo)

21. Referring to the Indian peace-keeping force, he said that during the period in which the force had been engaged in Sri Lanka a number of human rights violations had occurred, and he wondered what investigations had been carried out and what steps taken to compensate the victims.

22. Mr. Aguilar (Vice-Chairman) took the Chair.

23. Mr. de SILVA (Sri Lanka), replied that when he had referred to a four-month period for the filing of a fundamental-right application, he had not meant to imply that thereafter the case would be closed. If an individual's human rights were violated by a criminal act, the institution of criminal proceedings was covered by the Code of Criminal Procedure, under which there was no statute of limitations for the crime of murder, and a limitation of 20 years for all other crimes. However, when a special remedy was sought via the Supreme Court, the appeal had to be made expeditiously.

24. With regard to the question of habeas corpus, a person in custody must be produced within eight days from the date on which the application was filed. On the other hand, if parties alleged that a particular individual was being detained illegally, while the Government denied that such a person was in its custody, there was no way of producing that person within the stipulated time.

25. With regard to the activities of the Indian peace-keeping force, his Government was prepared to pay compensation to anyone who could establish that he or she had suffered as a result of those activities. However, as the force was no longer within Sri Lankan territory, his Government could not hold inquiries to determine whether there had been any human rights violations.

26. Mrs. HIGGINS said that there were fundamental differences of approach between the State party and the Committee with regard to the critical issue of restrictions and derogations. From the point of view of the Covenant, the proper course of action for a State party, if it was totally unable to accept the implementation of a particular human right within its territory, was to make a reservation. Furthermore, if the State party accepted a provision in principle, but felt that it must be limited in a particular case, then it must first provide for that possibility in its constitution; secondly, the constitutional provision must be permitted under the Covenant; and thirdly, it must be applied only to a particular case. If a State party wished to suspend the application of a provision to all its citizens for a given period, it must do so through derogation, provided that the right was one in respect of which derogation was permitted and that there was a threat to the existence of the nation.

27. Turning to the proposed Seventeenth Amendment to the Sri Lankan Constitution, she said that while it was difficult to specify her objections to each clause, they could be summarized as follows. First, restrictions which were not derogations could be applied only to articles of the Covenant for which restrictions were allowed; not all the Sri Lankan restrictions fell

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into that category. Secondly, restrictions were not permitted "in the interests of", but solely on grounds of necessity. The interests of the national economy or the promotion of religious harmony were not proper grounds. In her view, therefore, article 15 as a whole should be redrafted.

28. Mr. LALLAH said that he did not wish to give the Sri Lankan representative the impression that the submission of a supplementary report in the form of written replies had cleared up all the difficulties. If a supplementary report was to be considered by the Committee as a whole, it would have to be translated into all the official languages, and he did not see how that could be done within such a short time. If the supplementary report had been submitted before the start of the current session, the consideration of the second periodic report of Sri Lanka would clearly have been deferred. Under the current circumstances, the exercise would not be as productive as it might have been.

29. Mr. EL-SHAFEI requested clarification of the status of international treaties and agreements within the constitutional and legal framework of Sri Lanka, since they were mentioned in only one clause, article 157, and that article referred to only one category of treaties.

30. Mr. MAVROMMATIS said that he fully agreed with Mrs. Higgins. The Constitution appeared to be excessively cautious in its approach. Most countries did not include in their constitutions restrictions on fundamental rights to cover cases of defamation or contempt of court. In some cases, however, such as discrimination against women under Islamic law, a State party was required either to apply the Covenant or to enter a reservation.

31. With regard to the proposed Seventeenth Amendment, he had difficulty with article 12 (2), which outlawed discrimination on certain grounds but not others such as race or national or social origin. Article 15 contained sweeping limitations in areas where the Covenant did not allow restrictions. Article 12 (1) (a) provided that all persons were equal before the law and were entitled to the equal protection of the law. However, the Sri Lankan representative had stated that the provision could be restricted on grounds of national security or public order. It was hard to understand the rationale for such a restriction. Article 12 (3) prohibited discrimination with regard to access to certain public places. By expressly enumerating those places, the Government left open the possibility that such discrimination might be permitted elsewhere.

32. Mr. de SILVA (Sri Lanka) said that the courts in his country were required to certify the constitutionality of any statute before enactment. Any proposed restriction of a right which was not specifically permitted by the Constitution would not be accepted by the courts, even if it was understood to be part of normal jurisprudence.

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33. With regard to the question of entering a reservation, it was an extreme step for a country to take, because once a reservation had been made, it was very difficult to remove it from the statute books.

34. Replying to Mr. El-Shafei, he said that article 157 related to commercial treaties. The International Covenants were not automatically incorporated into Sri Lankan law but only upon adoption by the courts.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section II of the list of issues)

35. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Sri Lanka, dealing with: (a) the composition and functions of the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights and the results of its operation (para. 17 of the report); (b) statistical data on women's participation in the political, economic, social and cultural life of the country and the proportion of the sexes in schools and universities; (c) the treatment of aliens and the areas, other than the exercise of political rights, in which the rights of aliens were restricted as compared with those of citizens.

36. Mr. de SILVA (Sri Lanka), referring to section II (a), said that the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights consisted of persons having expertise in such areas as law, medicine, science, engineering, banking and administrative or social service. The Chairman of the Commission was a retired Justice of the Supreme Court. The members of the Commission had permanent tenure. Their mandate, as set out on page 7 of the supplementary report, was to eliminate unjust discrimination on the grounds of race, religion, language, caste, sex, political opinion, or place of birth by the Government or any government agency. The Commission was not empowered to investigate discrimination by a private organization. The Commission had investigated 2,204 cases of which 1,441 had been settled, 109 were in progress, and the rest had not been pursued for various reasons.

37. Referring to section II (b), he said that the number of women admitted to university had been 10,535 and 12,671, respectively, in the academic years 1987-1988 and 1988-1989. In the period 1985-1986, 1,532,700 women had been employed, as compared with 3,624,700 men. That disparity did not reflect any active discrimination, but merely the fact that, in the social context of Sri Lanka, fewer women than men sought employment.

38. With regard to the participation of women in political life, he noted that, since 1931, universal adult enfranchisement had ensured the free and unhindered participation of women in the country's political institutions. Women served as mayors of major cities and held seats in the National Parliament and posts in the Cabinet of Ministers. His country had also elected the world's first woman Prime Minister, who was currently the leader of the opposition in the National Parliament. It was therefore clear that women did not suffer any discrimination on grounds of sex.

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39. Turning to section II (c), he said that under article 12 (1) of the Constitution, all persons, regardless of nationality or citizenship, were equal before the law and were entitled to equal protection of the law. However, certain rights, such as freedom of movement or the right to choose residency within Sri Lanka, were not equally available to aliens. While there was no statute restricting an alien's freedom of movement, the Constitution provided that, if necessary, non-citizens should not have the same freedom to move within the country as citizens. Furthermore, with regard to entry and extradition, provision had been made for the internationally accepted norm that the extradition of a non-national should be governed by the same rules as the extradition of a national. In certain cases, the courts had held that the applicability of the extradition rule depended upon the nationality of the person concerned. However, his Government was also seeking to comply with the Covenant, which did not recognize such a distinction. Article 12 (1) (a), recognizing equal access to the judicial process, had been part of the constitution since 1978.

40. Mr. SADI agreed that the restrictions to fundamental rights under article 17 were unacceptable under the Covenant.

41. He noted that Sri Lankan women were allowed to work outside the country under conditions bordering on servitude, often leaving their children and families behind, but were not accorded any remedies, even by their diplomatic representatives abroad. That situation approached discrimination against women and should be addressed.

42. Mr. ANDO said that the grounds of discrimination outlawed by the Covenant were spelled out clearly in that instrument and the Seventeenth Amendment to the Constitution could easily be brought into line with it. Measures to eliminate sex discrimination did not cover the private sector, but such discrimination often occurred there. He wondered whether Sri Lanka was party to the Convention on the Elimination of Discrimination against Women and whether discriminatory practices of private enterprises could be made punishable under domestic law.

43. Mr. WENNERGREN said that, while article 25 of the Covenant provided the fundamental right to vote without any of the distinctions mentioned in its article 2 and without unreasonable restrictions, paragraph 89 of the Constitution deprived prisoners serving sentences longer than six months of the right to vote during their sentence and for seven years thereafter. It was difficult to find objective reasons for such treatment of prisoners, particularly in the light of article 10 of the Covenant, which stated that the aim of correction was rehabilitation. It appeared that prisoners could not be regarded as reformed for seven years following their sentence and were not considered real citizens while in prison. He would welcome an explanation of the historical or cultural factors behind that practice.

44. Mr. de SILVA (Sri Lanka), in reply to Mr. Sadi's question regarding women working outside the country, said that the Government could not deny a woman's freedom to work abroad, and it was the responsibility of the receiving country to treat its workers properly. Abuses, while unfortunate, were outside the Government's control. He was grateful that the matter had been brought to his attention, and would communicate it to his Government, but aside from diplomatic protest, no legal remedy was available.

45. In response to Mr. Ando's questions concerning the private sector, if international agencies sought to invest in his country, then it followed that international norms must be observed regarding employment practices. If any restrictions on the private sector existed under international law, he would communicate them to his Government. However, in his understanding, private companies were beyond the dictates of the Government.

46. Concerning the voting rights of prisoners, a limited period of disenfranchisement was imposed for prior violations of election laws; that was meant to be a deterrent. Prisoners were not allowed to vote for historical reasons which had existed before the Constitution.

47. Mr. SADI agreed that it was primarily the responsibility of the receiving State to ensure fair working conditions. The matter should be brought up with States parties in the context of periodic reports. However, Sri Lanka could do more to protect its citizens working abroad. He suggested that it might be possible to invoke article 24 of the Covenant in that regard, since it provided that every child had the right to such measures of protection as were required by his status as a minor.

48. Mr. MAVROMMATIS noted that many South-East Asian women were employed in his country, and that the Sri Lankan Government had made frequent inquiries about the status of its nationals.

49. Mr. de SILVA (Sri Lanka) said that he would welcome more information from the Committee regarding invocation of article 24 of the Covenant. If such a course of action were possible, he would inform his Government.

Right to life (article 6 of the Covenant) (section III of the list of issues)

50. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) number of occasions since the consideration of the initial report upon which the courts had ordered the death penalty and the number of such sentences carried out; (b) rules and regulations governing the use of firearms by the police and security forces, violations, and measures taken to prevent recurrence; (c) Government awareness of reports alleging extrajudicial executions and results of any investigations of such reports; (d) results of deliberations of the Presidential Commission of Inquiry into Disappearances established in January 1991; (e) clarification of the composition, powers and function of the Organization for Protection of

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Human Rights through Law Enforcement Agencies (ORPTLEA) and the results of its activities; (f) additional information on the provisions of Emergency Regulations 55 B through F relating to post-mortems and inquests; and (g) progress in reduction of infant mortality in the period under review.

51. Mr. de SILVA (Sri Lanka), referring to section III (a), said that no death sentence had been carried out since 1977, though the death penalty remained on the statutes. Its imposition was mandatory for a few offences such as murder, treason and abetment of suicide, and could be imposed for certain drug offences. The convicted person had the right of appeal to the Court of Appeal and to the Supreme Court. The law required the trial judge imposing a death sentence to forward a report to the President with his recommendations. Since 1977, the President had invariably exercised his power to commute the sentence to life imprisonment.

52. Regarding section III (b), police officers did not normally carry firearms and on those occasions when they did, they were required to use a minimum of force; use of excessive force was considered a criminal offence. Mandatory procedures were followed for the issuance of weapons and ammunition. In cases of misuse of firearms, the offender faced disciplinary action or criminal trial. Attacks on police stations and police officers by terrorist groups had made it necessary to permit a small quantity of weapons and ammunition to be kept outside the armouries for use in an emergency.

53. The Government of Sri Lanka was aware of the allegations of extrajudicial executions, a number of which had been carried out by members of militant or terrorist groups. The Government was vigilant that no State agency should resort to such practices, but a few cases were under investigation. It had maintained an open dialogue with the United Nations and its human rights bodies, and had examined relevant United Nations reports. Unfortunately, particularly in the North and East, a situation of conflict and insecurity persisted, preventing adequate investigation in some cases.

54. In response to section III (d), the Presidential Commission of Inquiry into Disappearances had received seven complaints which fell outside its terms of reference and 15 complaints of removals by unknown persons or where the whereabouts of those removed were unknown. Those 15 complaints were under investigation by the Commission's investigation unit, which provided periodic progress reports. Public hearings in respect of the complaints so far received were expected to begin as soon as the investigations had been concluded.

55. He listed the membership, both ex officio and nominated, of the Organization for the Protection of Human Rights through Law Enforcement Agencies (section III (e)). Its objectives were to promote and coordinate the work of law enforcement officials and agencies in their recognition of and respect for human rights; to study and formulate principles, practices, procedures and prerequisites for the observance of human rights in law

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enforcement; to assist in formulating policies and codes of conduct to advance the administration of justice in general and the observance of human rights in particular; to encourage every law enforcement official and agency to practise self-discipline in conformity with the principles of the Universal Declaration of Human Rights as embodied in the Constitution and laws of Sri Lanka and other human rights instruments ratified by the Government of Sri Lanka; and to take all necessary steps for the furtherance of those objectives.

56. In response to questions regarding Emergency Regulations 55 B through F relating to post-mortems and inquests (section III (f)), he said that he would make available the provisions of those Regulations to members.

57. With regard to section III (g), infant mortality had decreased appreciably, to 20 per thousand live births from a rate of 22.6 in 1986. That achievement was largely due to Government social welfare policies such as food subsidies, pre-natal care and free health care for the entire population.

58. Turning to the allegations of disappearances or extrajudicial executions, he contended that in periods of increased terrorist activity, the number of such allegations increased. The security forces had indeed been guilty of some instances of misconduct, but not all such incidents were attributable to them. In some cases, family members of victims had sometimes taken the law into their own hands and had taken revenge. The Government did not condone such action, but simply wished to explain the realities of the situation. As a result, the Government had invited the Working Group on Enforced or Involuntary Disappearances to visit the country and offer its expertise to assist in ending the phenomenon.

59. It had also been alleged that members of the armed forces committing such acts were not being prosecuted. In most such cases, however, there was insufficient evidence to obtain an indictment. A list of such cases was annexed to the replies to the list of issues. The Government made no claim to completely satisfactory results, but the situation was coming under control.

60. Mr. Pocar (Italy) resumed the Chair.

61. Mr. MAVROMMATIS, while welcoming the news that the death sentence had not been carried out since 1977, suggested that, pending de jure abolition of the death penalty, the Government might look into the matter of the mandatory death sentence in cases of abetment of suicide, since suicide had been decriminalized in most countries. Further, though drug offences had serious consequences, in many countries they were not seen as meriting the death penalty. In his country, the courts had found mandatory death sentences unconstitutional on the basis of international human rights covenants.

62. He requested clarification of the emergency regulations in respect of inquests and post-mortems. According to his interpretation of the regulations, if an individual died while in custody of the security forces, an inquest was held only if requested.

63. Mr. MYULLERSON expressed concern about reported cases of disappearances, extrajudicial executions and acts committed by vigilante groups in Sri Lanka. He requested the delegation of Sri Lanka to comment on the allegations contained in a report published by Amnesty International; in particular, he wished to know what was covered by the term "vigilante groups". While he did not know whether or not the allegations in question were true, he believed that the information supplied by Amnesty International and other human rights organizations was generally reliable. While terrorist acts accounted for most of the cases of disappearances in Sri Lanka, the State was nevertheless responsible for investigating them, especially in the light of the Committee's general comment on article 6 of the Covenant.

64. Mr. AGUILAR associated himself with the comments made by Mr. Mavrommatis on the issues of suicide and post-mortems. He attached a great deal of importance to the information which the Committee received from Amnesty International and supported Mr. Myullerson's comments on that organization's recent report. He observed that, although Emergency Regulation 55 F was no longer in force, it had been in force during the period under consideration; moreover, Emergency Regulations 55 B-55 F made it possible to dispense with investigations of deaths caused by the police.

65. Mr. LALLAH wished to know why the State had been relieved of the obligation to investigate any deaths resulting from violence. He inquired whether anyone had been convicted of abetting suicide and, if so, how many people had been sentenced to death. He wished to know how many people, if any, had died while in custody and what steps were being taken to ensure that bodies were not disposed of in order to exonerate the security forces. Finally, he wished to know what constituted a drug-related offence, and he requested information on the frequency of such offences in Sri Lanka and the number of people who had been sentenced to death for those offences.

66. Mrs. HIGGINS said that she was pleased at Sri Lanka's invitation to the Working Group on Enforced or Involuntary Disappearances. She appreciated the information provided by the Sri Lankan representatives on inquiries which were currently in progress and on the Presidential Commission of Inquiry. She understood that it was impossible for the Presidential Commission of Inquiry to bring charges without reliable witnesses; nevertheless, it was the Government's responsibility to take vigorous action to control, either directly or indirectly, the activities of terrorist groups.

67. Mr. de SILVA (Sri Lanka) said that, while he agreed with Mrs. Higgins, the lack of evidence was due to fear on the part of potential witnesses. However, he fully agreed that it was the State's responsibility to do everything within its power to prevent criminal elements from intimidating law-abiding citizens.

68. Suicide had not been decriminalized because it was one of the few offences which could not be punished. The provision on suicide in the Penal Code had been based on the Christian concept that an individual did not have

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the right to take his own life. Since, under Sri Lankan law, the person who committed suicide was considered to be committing an act of murder on himself, the person who abetted the suicide was equally guilty of the offence. There had been only two cases of abetment of suicide, both of which had involved suicide pacts. While he agreed that the law on suicide and abetment of suicide was anachronistic, he believed that it should remain in the Penal Code.

69. Unfortunately, he was not able to provide figures regarding the quantity of drugs an individual had to have in his possession in order to be guilty of a drug-related offence. Since Sri Lanka was becoming a transshipment point for illicit drug trafficking, the Government had decided to retain the death penalty as a deterrent to potential offenders. A number of foreigners convicted of drug-related offences were currently serving sentences commuted from death to life imprisonment.

70. Inquest procedures had been relaxed under the Emergency Regulations because it had become practically impossible to hold an inquest in the current circumstances. Under the law, when an inquest was held, a magistrate was required to go to the scene of the crime and conduct an investigation. However, since magistrates had almost no access to terrorist hideouts, the Government had decided to waive the requirement for an inquest but had continued to insist on a post-mortem which was conducted in the mortuary, and on keeping a record of injuries, the aim being to reduce the likelihood that bodies of murder victims would be passed off as those of victims of confrontation with the security forces. The situation was not ideal, and that was why the Emergency Regulations had been modified. It had been left to the discretion of the Inspector General of Police to call for an inquest where a preliminary police investigation indicated that there was some culpability on the part of the person who had caused the death; however, in cases where there had been a straightforward shootout between terrorist groups and government soldiers, inquests were not usually held.

71. There had been three or four instances of persons dying while in police custody. In at least two cases, the officers concerned had been charged with murder or similar offences and some had been found guilty of lesser offences such as wrongful confinement or of having caused injury without intending to cause the death of the prisoner or detainee.

72. He believed that the allegations made by Amnesty International and other human rights organizations were only as reliable as their information sources. The Amnesty International report in question contained several allegations which were incorrect. However, he would prefer not to use the Human Rights Committee as a forum for discussing the veracity of those allegations.

Treatment of prisoners and other detainees (articles 7 and 10 of the Covenant) (section IV of the list of issues)

73. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) controls instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; (b) existence of machinery for carrying out an independent and impartial investigation of allegations of torture and of arbitrary and extrajudicial executions, and the conduct and results of such independent investigations; (c) information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; and (d) compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and prisoners' awareness of and access to the relevant regulations and directives.

74. Mr. de SILVA (Sri Lanka), replying to section IV (a) of the list of issues, said that every person admitted to prison was examined by a doctor who recorded his observations, which served as a reference for verifying whether the condition of the prisoner had deteriorated in any way during his detention. The detainee was then informed of his rights and duties as a detainee, including information regarding his right to complain about any ill-treatment during his period in custody. The Emergency Regulations also required the magistrate having jurisdiction over the area where the prison was situated to visit the prison at regular intervals and to record any complaints from detainees.

75. Under the Prisons Ordinance, the Minister of Justice appointed a Board of Visitors who were empowered to visit any prison in Sri Lanka to examine conditions, hear inmates' complaints and make appropriate recommendations to the authorities. There was also a local Prison Visitors Committee for each prison, which was also appointed by the Minister and was composed of persons not holding public office; visits by that Committee usually took place on a weekly basis. The Prison Ordinance also authorized a magistrate to visit a prison at any time and to question any detainee.

76. In July 1990, the Sri Lankan Government had signed an agreement with the International Committee of the Red Cross (ICRC) with a view to enabling that organization to commence humanitarian functions in Sri Lanka in association with the country's authorities. Since then, the staff of the ICRC delegation had increased to about 65 persons, who were active throughout the country. Members of the delegation were granted free access to all places of detention, including prisons, police stations and detention and rehabilitation centres, in order to ensure that internationally accepted norms were maintained for the safety and well-being of inmates. Delegates of ICRC examined the living conditions of detainees and their treatment by the authorities, welfare facilities, food and other matters, and they recorded any complaints which, after investigation, were conveyed in detailed periodic reports to the Sri Lankan Government. The Government considered the reports at the highest political level with a view to implementing the recommendations contained in the reports.

(Mr. de Silva, Sri Lanka)

77. With respect to section IV (b), he said that the Supreme Court in the exercise of its fundamental rights and jurisdiction could and did examine allegations of torture made by detainees. Such complaints could be made either by detainees or on their behalf. The Court of Appeal could, when examining the legality of a detention by the procedure of a writ of habeas corpus, examine any allegation of the mistreatment of a detainee during his period in custody, and it had done so in several cases. More often than not, the inquiries had proved that the allegations were unfounded. However, in cases in which the allegations were substantiated, compensation for the victim and criminal prosecution of the offender had been ordered. Any proven act of extrajudicial execution was treated as a case of murder.

78. Replying to section IV (c), he said that a representative committee under the umbrella of the All Parties Conference was required to visit periodically places other than regular prisons where detainees were being held. That Committee recorded and considered any complaints which were recorded.

79. With respect to section IV (d), the briefing of detainees also included information regarding the United Nations Standard Minimum Rules for the Treatment of Prisoners and, in prisons where the Standard Minimum Rules were available for reference, detainees were free to consult them.

80. Mrs. HIGGINS wished to know whether ICRC had full access to the north-eastern part of Sri Lanka. While section 7 of the Prevention of Terrorism (Temporary Provisions) Act was, broadly speaking, acceptable in terms of article 9 of the Covenant, problems arose when section 9 of that Act, which stated that section 7 did not apply when there was a detention order. Under section 9, a person who was believed or suspected by the Minister of Justice to have a connection with any unlawful activity might be detained, by order of the Minister, for a period not exceeding three months in the first instance; thereafter, extensions were permitted up to a period of 18 months. It was the view of the Committee that 18-month periods of detention, based purely on the Minister's suspicion or belief and without access to a magistrate or to the courts, presented very grave problems from the point of view of article 9 (3) of the Covenant.

81. Mr. ANDO associated himself with Mrs. Higgins' observation.

82. Mr. LALLAH said that the special legislation which had been enacted to deal with the extraordinary situation in Sri Lanka should provide for writs of habeas corpus. He wondered to what extent the judicial authorities could be empowered to take unusual steps, such as visiting prisons. He inquired whether, in the case of a particular complaint, the authorities were prohibited from detaining persons elsewhere than in publicly recognized and gazetted prisons. He also wished to know whether judges were allowed to visit prisons which were not proclaimed detention centres.

83. Mr. de SILVA (Sri Lanka) said that there were a few camps and places other than the regular prisons which had been designated as places where detainees could be held. They were visited by a group of persons appointed under the umbrella of the All Parties Conference. While any judge had the right to visit such places, there had been no cases of such visits because, whenever a writ of habeas corpus was issued, the detainee was invariably brought to court within the first few days; thereafter, the detainee appeared in court whenever the inquiry was taken up. However, judges had the right to visit prisons and magistrates were mandated to visit them at regular intervals.

84. The unlawful activities defined in the Prevention of Terrorism (Temporary Provisions) Act involved activities of a terrorist nature. In Sri Lanka, there were various views regarding that type of preventive detention. Section 13 (2) of the Act provided that any person in respect of whom any detention order or restriction order had been made should be informed of the unlawful activity in connection with which such order had been made and such person or any other person on his behalf might make representations to the Advisory Board. The Advisory Board took the place of the judicial authority before which persons were normally brought to trial.

The meeting rose at 6.05 p.m.